



Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE

Date: May 23, 2006

Contract #: VA-051025-ASAP

Authorized User: State Agencies, Institutions, and other Public Bodies
as defined in the VPPA

Contractor: ASAP Software Express, Inc.
850 Asbury Drive
Buffalo Grove, IL 60089

Contact: See Page 3

FIN: 36-3328437

Pricing: [Exhibit B](#)

FOB: Destination

Delivery: 5 Days ARO

Term: December 2, 2005 – December 1, 2007

Payment: Net 30 days

For Additional Information, Please Contact:

Supply Chain Management
Virginia Information Technologies Agency

George Goodman
Phone: 804-371-5990
E-Mail: george.goodman@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT # VA-051025-ASAP
CONTRACT CHANGE LOG

[illegible]

CONTRACTOR POINTS OF CONTACT

ASAP State Government Sales

ATTN: Darren Lewis
Sr. Account Executive, State Gov't Sales
850 Asbury Drive
Buffalo Grove, IL 60089-4557
Telephone: 888-883-1029
Direct: 847-465-3700 ext. 5363
Fax: 847-465-3277 or 847-403-2100
Email: dlewis@asap.com

ASAP State Sales Representatives

Bill Kluth, Regional Mgr State/Local Gov-East US
Email: bkluth@asap.com

Day-to-Day Virginia Account Team

Jason Jarvis, Eastern States Inside Account Mgr
Email: jjarvis@asap.com

Jennifer Warren, Inside Account Mgr – VA
Telephone: 866-465-2458
Direct: 847-465-3700 ext. 5699
Fax: 847-465-3277
Email: jwarren@asap.com

Remittance Address

ASAP Software
PO Box 95414
Chicago, IL 60694-5414

USA State/Local Government

ASAP_StLocalGovt@asap.com

USA Educational Organizations

ASAP_Educational@asap.com

ASAP Website: <http://www.ASAP.com>

COMMONWEALTH of VIRGINIA

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

SUPPLY CHAIN MANAGEMENT

110 SOUTH 7TH STREET

RICHMOND, VIRGINIA 23219

VITA Statewide Term Contract: VA-051025-ASAP

ANTI-VIRUS SOFTWARE

Virginia Information Technologies Agency



**MODIFICATION # 1
TO
CONTRACT #VA-051025-ASAP**

**BETWEEN THE
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ASAP SOFTWARE**

REFERENCE: Modification #1 is hereby incorporated into and made an integral part of Agreement #VA-051025-ASAP, between ASAP Software and the Virginia Information Technologies Agency. In the event of any inconsistency between the provisions of this Modification and Agreement Number VA-051025-ASAP, the provisions of this Modification shall control.

PURPOSE: The purpose of this modification is to add additional software products, as listed in the Attachment (titled "Commonwealth of Virginia - McAfee Software Products") hereto to the Commonwealth's contract effective upon both parties agreement and execution of this modification document.

COST: The Commonwealth's cost for the additional McAfee software products shall be calculated using the same or similar discount as originally applied to the software pricing.

OTHER: All other terms and conditions of the Agreement remain unchanged.

PERSONS SIGNING THIS MODIFICATION ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS AGREEMENT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

ASAP SOFTWARE

BY: George S. Goodman, Jr.

BY: Randall A. Lee

NAME: George S. Goodman, Jr.

NAME: Randall A. Lee

TITLE: Sr. IT Sourcing Consultant

TITLE: V.P. Government Sales

DATE: May 1, 2006

DATE: 20 April 2006

**ATTACHMENT A
TO
MODIFICATION # 1
TO
CONTRACT #VA-051025-ASAP**

**BETWEEN THE
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ASAP SOFTWARE**

McAfee Software Product

Contract Price

McAfee Active Mail Protection - includes SpamKiller	\$4.63
McAfee LinuxShield	\$3.53 new with 1 year maint \$1.41 maint renewal
McAfee Desktop Intrusion Prevention	\$5.23 new with 1 year maint \$1.24 maint renewal
McAfee Server Intrusion Prevention	\$170.90 new with 1 year maint \$ 40.69 maint renewal
McAfee Policy Enforcer	\$8.15 new with 1 year maint \$3.27 maint renewal
Active Virus Defense	\$15.20 new with 1 year maint \$ 6.09 maint renewal

**MASTER AGREEMENT
VA-051025-ASAP
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
ASAP SOFTWARE**

1. SCOPE OF CONTRACT

This is a Master Agreement (the "Agreement" or "Contract") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) and ASAP SOFTWARE (the "Contractor"), a wholly-owned subsidiary of Buhrmann NV, a Dutch corporation with its principal domestic place of business at 850 Asbury Drive, Buffalo Grove, IL 60089. This Agreement contains the Contractual terms and conditions by which the Commonwealth will establish a Master Software Reseller Ordering Agreement for State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301 and referenced by Section 2.2-4304 of the Code of Virginia and hereinafter referred to as "Authorized Users", to acquire "Software" and "Services" pursuant to the Commonwealth's Request For Proposal #2005-12B (the "RFP") and the Contractor's proposal, dated April 29, 2005, in response thereto ("Proposal").

Upon award, all orders for Software and Services will be placed directly with the Contractor by Authorized Users.

2. INTERPRETATION OF AGREEMENT

As used in this Agreement, "Software" and shall include all related materials and documentation, whether in machine-readable or printed form. "Services" shall include all maintenance and support services.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

3. APPLICABLE LAWS AND COURTS

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local

laws, rules and regulations. Contractor agrees to comply with all the applicable laws and regulations,

http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf

4. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

5. ASSIGNMENT OF CONTRACT

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth. The Commonwealth may assign this Contract to any entity, without fee, so long as the assignee agrees in writing to be bound by all the terms and conditions of this Contract.

6. MODIFICATIONS

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modification to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Authorized Representatives:

Commonwealth of Virginia:
Contracts Manager
Virginia Information Technologies Agency
Richmond Plaza Bldg., Lobby Level
110 South 7th Street
Richmond, VA 23219-3931

Contractor:
ASAP SOFTWARE
ATTN: Vice President, Sales
850 Asbury Drive
Buffalo Grove, IL 60089

7. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

8. TRANSPORTATION AND PACKAGING

Contractor warrants that the price offered for F.O.B. destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

9. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for de-installation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

10. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in its Proposal as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

11. DELIVERY DATE

The Contractor shall deliver the Products, and Software ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

12. AVAILABILITY OF SOFTWARE

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

13. PRODUCT CONDITION

All products to be supplied by Contractor shall be new.

14. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The ordering Authorized User shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of Software furnished hereunder with any Software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide non-

infringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half percent (1/2%) of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

15. NON-APPROPRIATION

All funds for payment of Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

16. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

17. PRICE PROTECTION/ADJUSTMENTS

The Commonwealth will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any order, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

18. TERM

This Agreement shall take effect on the date of its final execution by both parties, and continue for two (2) years, "Initial Term". The Commonwealth at its sole discretion may extend this Agreement for three (3) additional one (1) year periods. The

Commonwealth will issue a written notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

19. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

20. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

21. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, Software, and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

22. SUPPLIES

Authorized charges do not include operational supplies (e.g., paper, tape) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of installation. The State reserves the right to acquire such supplies from any contractor of its choice.

23. TERMINATION FOR CONVENIENCE

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for Convenience.

24. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the order, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

25. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the ordering Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The ordering Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the ordering Authorized User on the claim, unless that Authorized User fails to render its decision within thirty (30) days. The decision of the ordering Authorized User shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

VITA, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Authorized User purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In

no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

26. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

27. TITLE (SOFTWARE/FIRMWARE)

The Contractor represents and warrants that it is the sole owner of the Software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the Software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the Software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

28. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis unless otherwise specified in the ordering documents and shall commence upon the acceptance of the Software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the Software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

29. CONTRACTOR'S WARRANTY POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

30. SOFTWARE WARRANTY

All Software shall have a ninety (90) day return to vendor/manufacture warranty. For any Product that does not meet any published specification from the vendor/manufacture, the Authorized User may return the Product for a full refund during this ninety (90) day period. The ninety (90) day period commences upon a successful acknowledged delivery and continues unabated for ninety consecutive days.

31. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data programs. Contractor further warrants that neither the Contractor, nor its agents, employees nor subcontractors shall insert any such device after execution of this Agreement.

32. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the Contractor will include a section on involvement of small businesses and business owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the Contractor will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

33. BUY OUTS – THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the VITA Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this

Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

34. ORDERS

Authorized Users of this Contract may order Products and Software from this Contract by one of the following Order methods:

- a. Purchase Order: An official Purchase Order form issued by an Authorized User.
- b. Delivery Order (DO): A DO issued by VITA.
- c. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor shall accept any and all orders issued through eVA.
- d. Charge/Credit Card:
 - i. Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
 - ii. Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products/Software available under this Agreement. Under no circumstances shall any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

35. INVOICING

The Contractor shall remit each invoice to the ordering entity, or Authorized User. The Contractor shall issue invoices, identifying at a minimum, the components listed below.

- a. manufacturer's product number
- b. product description
- c. price per unit
- d. quantities of merchandise
- e. extended price
- f. date ordered
- g. date delivered
- h. listing of returns

36. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Product on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Product with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Product at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such Software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

37. CONFIDENTIALITY

Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Confidentiality Section G.3 shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

38. EXCLUSIVITY OF TERMS AND CONDITIONS

VITA will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this Contract. Any documents signed by persons other than the Contracts Manger, VITA, shall have no validity and the Terms and Conditions herein shall supersede all such agreements.

39. CONTRACTOR'S REPORT OF SALES AND INDUSTRIAL FUNDING ADJUSTMENT

The Contractor shall submit the "Supplier Monthly Report of Sales" which will be provided to Contractor upon Contract award. The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10th day of every month, reporting all invoices paid by Authorized Users for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The Supplier Monthly Report of Sales template (in MS Excel format) is required to be used by the Supplier and provided to VITA.

The "Supplier Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, Contractor's tax identification number, invoice date, invoice number, order number, name of requesting entity, Authorized User name and telephone number, amount billed for services performed for previous month, and IT service category.

At the same time as submitting the "Supplier Monthly Report of Sales", the Contractor shall submit Industrial Funding Adjustment payment in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on 2% of total sales under this Contract. Contractor shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Contractor shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

40. eVA FEE

The Contractor's statutorily mandated obligations with respect to eVA, the Commonwealth's electronic procurement solution, are located at the following URL:

http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf

41. ENTIRE CONTRACT

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

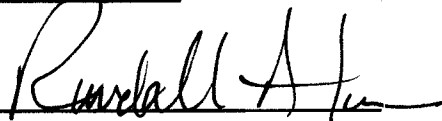
- i). Exhibit A: McAfee End User Licensing Agreement, as Amended
- ii). Exhibit B: Product Pricing
- iii). Exhibit C: Certification Regarding Lobbying
- iv). Exhibit D: Contractor's proposal, dated April 29, 2005
- v). Exhibit E: Contractor's Migration Plan

This Contract, its Exhibits and Attachments, and any prior non-disclosure agreement constitute the entire agreement between the Parties and supersede any and all previous representations, understandings, discussions or agreements between VITA and Contractor as to the subject matter hereof. This Contract may only be amended by an instrument in writing signed by VITA and Contractor. In the event of a conflict, the following order of precedence shall apply: this Contract, Exhibit A, Exhibit B, Exhibit D, Exhibit E, Exhibit C.

VITA and Contractor each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ASAP SOFTWARE

BY: 

NAME: RANDALL A. LEE

TITLE: VP GOVT SALES

DATE: 02-NOV-05

COMMONWEALTH OF VIRGINIA

BY: 

NAME: PHILIP L. PIPPERT

TITLE: ASSOC. DIRECTOR, SCM

DATE: 12/2/05

Exhibit A EULA as Amended

MCAFEE EULA AND AMENDMENT

**BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
MCAFEE, INC.**

This Exhibit A, McAfee's End User License Agreement ("EULA") amendment is hereby incorporated into and made an integral part of Contract Number VA-051025-ASAP (the "Contract") between the Virginia Information Technologies Agency ("VITA" or "Commonwealth" or "State") and McAfee, Inc. ("Manufacturer").

AMENDMENT TO MANUFACTURER'S END-USER LICENSE AGREEMENT

MANUFACTURER'S NAME: McAfee, Inc.
CORPORATE ADDRESS: 3965 Freedom Circle
Santa Clara, California 95054, USA

Whereas, VITA and Authorized Users wish to purchase from Manufacturer pursuant to Contract certain software manufactured by ("Manufacturer"):

Software Titles (collectively, the "Software")
Active VirusScan
Virex
Anti-spyware Enterprise
VirusScan Consumer
VirusScan Suite Student Option
Anti-spyware enterprise student option
Virex Student Option

Whereas, Manufacturer is authorized sell Software.

Whereas, terms under which the Software purchased by VITA and any Authorized User shall be used shall be set forth in the End User License Agreement ("EULA," Exhibit A to Contract) that accompanies the Software.

Whereas the Parties agree that the following terms shall supplement the terms of the EULA.

VITA, pursuant to §2.2-2012 of the Code of Virginia, and Manufacturer (collectively "the parties") are entering into an amendment of the EULA and, for their mutual convenience, the parties are using this standard amendment form agreement ("Amendment") to be effective as of September 28, 2005 ("Effective Date"). This Amendment, duly executed by the parties, is attached to and hereby made a part of the

EULA and together shall govern the use of any and all McAfee Software licensed by VITA and or any Authorized User under this Contract whether or not specifically referenced in the order document.

The EULA is, with the exceptions noted herein, acceptable to VITA. Therefore, notwithstanding any terms appearing in the EULA, the Parties specifically agree:

- a.) Any clause in the EULA requiring VITA or any Authorized User to maintain any type of insurance either for VITA's or such Authorized User's benefit or for Manufacturer's benefit shall have no effect;
- b.) Any clause in the EULA renewing or extending the EULA beyond the initial term or automatically continuing the period of licensed use from term to term shall have no effect;
- c.) Any clause in the EULA requiring or stating that the terms of the EULA shall prevail over the terms of this Amendment in the event of conflict shall have no effect;
- d.) Any clause in the EULA requiring VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents to indemnify or to hold harmless Manufacturer, its officers, employees or agents, or third parties whose content or confidential information is intertwined with the Software for any act or omission shall have no effect;
- e.) Any clause in the EULA imposing interest charges contrary to that specified by §2.2-4347 et seq. of the Code of Virginia shall have no effect;
- f.) Any clause in the EULA requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this Amendment or the EULA or requiring or permitting that any dispute under this Amendment of the EULA be resolved in the courts of any state other than the Commonwealth of Virginia shall have no effect;
- g.) Any clause in the EULA requiring that this Amendment be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA or any Authorized User before this Amendment is considered in effect shall have no effect;
- h.) Any clause in the EULA delaying the acceptance of this Amendment or its effective date beyond the date of execution shall have no effect;
- i.) Any clause in the EULA limiting or adding to the time period within which claims can be made or actions can be brought shall have no effect;
- j.) Any clause in the EULA limiting the liability of Manufacturer for property damage or personal injury shall have no effect;
- k.) Any clause in the EULA permitting unilateral modification of this Amendment or the EULA by Manufacturer shall have no effect;
- l.) Any clause in the EULA binding VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other non-judicial entity shall have no effect;
- m.) Any clause in the EULA obligating VITA, its officers, employees or agents, or any Authorized user, its officers, employees or agents to pay costs of collection or attorney's fees shall have no effect;

- n.) Any clause in the EULA granting Manufacturer a security interest in property of VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents shall have no effect;
- o.) Any clause in the EULA limiting selection and approval of counsel and approval of any settlement in any claim arising under the EULA and in which VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents is a named party shall have no effect;
- p.) Any clause in the EULA bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia shall have no effect;
- q.) Any clause in the EULA permitting modification or replacement of the EULA pursuant to any new release, update or upgrade of Software shall have no effect;
- r.) Any clause in the EULA prohibiting VITA or any Authorized User to assign to any entity any license to Software pursuant to Contract shall have no effect; and
- s.) Any clause in the EULA permitting Manufacturer to assign, subcontract, delegate or otherwise convey this the EULA and this Amendment, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA shall have no effect.

Manufacturer warrants and represents that it is the owner of the Software or otherwise has the right to grant to VITA and all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

Licensee may assign its rights to request support, receive and load new releases of any nature to a third party under contract with VITA to provide such service to VITA.

For the purposes of this Amendment, Authorized User shall mean all public bodies, including VITA, as defined by §2.2-4301 of the Code of Virginia.

The parties agree that UCITA shall not apply to this Amendment, except for those provisions listed in §59.1-501.15 of the Code of Virginia as "not variable by agreement".

This Amendment and the EULA constitute the entire agreement between the parties regarding the licensed use of Software and may not be waived or modified except by written and signed agreement between the parties. For the purposes of this paragraph, the parties agree that signature means and physical signature and not an electronic signature.

By signing below, both parties agree to the terms of this Amendment and intend thereby to be legally bound. Executed as of the last date set forth below by the undersigned authorized representatives of the parties.



MCAFFEE, INC.

BY: [Signature]
NAME: Bill McAlister
TITLE: Sales V.P.
DATE: 11/9/05

COMMONWEALTH OF VIRGINIA

BY: [Signature]
NAME: Philip L. Pippert
TITLE: Assoc. Director, SCM
DATE: 12/2/05



**Exhibit B
TO
CONTRACT VA-051025-ASAP**

PRODUCT PRICING

Exhibit "B" is hereby incorporated into and made an integral part of Agreement Number VA-051025-ASAP between ASAP SOFTWARE and the Commonwealth of Virginia.

In the event of any discrepancy between this Exhibit B and Contract VA-051025-ASAP, Exhibit B shall control as to price.

This Exhibit includes pricing for a two-year commitment with two payment options: annual payment and up-front payment. Authorized User shall specify either annual or up-front payment in each order.

All product pricing includes McAfee Gold Support level.

1. McAfee SOFTWARE FOR WINDOWS PRICING

The price per copy for McAfee anti-virus desktop software for Windows shall be \$9.95 for a two-year term. This price can be paid in full up front (\$9.95) or in annual installments as follows: \$5.27 for the first year and \$4.68 for the second year.

After the initial two-year term, each Authorized User shall have the option to renew the software annually for up to three additional years for \$4.68 per copy. These annual renewals are subject to an inflation factor not to exceed 5% per year beginning in the 3rd year.

Servers are treated the same as the client nodes. Servers should be added to the number of clients to calculate the total number of licenses needed.

2. McAfee DESKTOP SOFTWARE FOR MAC PRICING

The price per copy for McAfee anti-virus desktop software for Mac shall be \$8.94 for a two-year term. This price can be paid in full up front (\$8.94) or in annual installments as follows: \$6.39 for the first year and \$2.55 for the second year.

After the initial two-year term, Each Authorized User shall have the option to renew the software annually for up to three additional years for \$2.55 per copy. These annual renewals are subject to an inflation factor not to exceed 5% per year beginning in the 3rd year.

Servers are treated the same as the client nodes. Servers should be added to the number of clients to calculate the total number of licenses needed.

3. CO-TERMINATION OF LICENSES

To support an orderly transition by Authorized Users to McAfee, License fees shall be pro-rated in the first year to allow for co-termination of the licenses for each Authorized User. The following table shows the pro-rated pricing for ASAP anti-virus software for Windows:

	Total Payment, if paid up-front	First Year Payment, if paid annually
Ordered Q1	\$ 9.95	\$ 5.27
Ordered Q2	\$ 8.64	\$ 3.96
Ordered Q3	\$ 7.32	\$ 2.64
Ordered Q4	\$ 6.00	\$ 1.32

The following table shows the pro-rated pricing for ASAP anti-virus software for Mac:

	Total Payment, if paid up-front	First Year Payment, if paid annually
Ordered Q1	\$ 8.94	\$ 6.39
Ordered Q2	\$ 7.34	\$ 4.79
Ordered Q3	\$ 5.75	\$ 3.20
Ordered Q4	\$ 4.15	\$ 1.60

4. McAfee SUPPORT UPLIFT PRICING

McAfee Platinum support is not priced per node. At VITA's request, ASAP shall assign up to four Technical Account Managers (TAMs) to the executive agencies in-scope to VITA for an annual fee of \$24,500 for the first TAM and \$15,000 for each additional TAM. The skus respectively are MRNYDM-AD and MRNYDM-KD.

Any Authorized User may upgrade to Platinum support for a \$24,500 annual fee.

"How to calls" pertaining to migration shall be handled at the gold support level and not at the TAM level.

5. PRICING FOR ADDITIONAL ITEMS

The following items are also available for purchase under this Contract:

Other Services	
Item/Service	Fee
Migration/installation fee (including uninstalling current product)	\$2,375.00 per day
Rate for non-VITA installations and services not covered by the MTC or beyond migration	\$2,375.00 per day
Anti-virus general class day (off-site training; courses are usually 2-3 days in length)	\$649.52 per day per student

6. McAfee SOFTWARE PRICING FOR STUDENTS AND EMPLOYEES

The following prices apply to purchases by Commonwealth employees and students of community colleges and institutions of higher learning:

Student Use Desktop Firewall, per copy per year	\$0.44
Student Use VirusScan, per copy per year	\$0.46
Faculty, Staff and Commonwealth employee Home Use VirusScan Consumer, per copy per year	\$1.09
Student Use Virex (for Mac), per copy per year	\$0.44

7. SHIP TO / BILL TO ADDRESSES

Shipping and billing addresses will be included on the individual Orders of Authorized Users referencing this Contract.

8. DELIVERY SCHEDULE

All shipments shall be FOB destination. Shipping charges shall be included in product pricing. No additional charges are allowed. The delivery schedule shall be specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation.

9. VITA POINTS OF CONTACT

Contract Administration/Compliance

Robert Gleason
Contracts Administrator
Virginia Information Technologies Agency
110 South 7th Street, East Lobby
Richmond, VA 23219-3931
Tel: (804) 371-5923
Fax: (804) 371-5969
Robert.Gleason@vita.virginia.gov

Contract Information

George S. Goodman, Jr.
Strategic Sourcing
Virginia Information Technologies Agency
110 South 7th Street, East Lobby
Richmond, VA 23219-3931
Tel: (804) 371-5990
Fax: (804) 371-5969
george.goodman@vita.virginia.gov

10. CONTRACTOR POINTS OF CONTACT

ASAP State Government Sales

Remittance Address

ASAP SOFTWARE
ATTN: Darren Lewis
Sr. Account Executive, State Gov't Sales
850 Asbury Drive
Buffalo Grove, IL 60089-4557
Tel: (888) 883-1029
Tel: (847) 465-3700 ext. 5363
Fax: (847) 465-3277 or 403-2100
Email: dlewis@asap.com

ASAP Software
PO Box 95414
Chicago, IL 60694-5414

USA State/Local Government
ASAP_StLocalGovt@asap.com

USA Educational Organizations
ASAP_Educational@asap.com

ASAP Website
<http://www.ASAP.com>

ASAP State Sales Representatives

- Bill Kluth - Regional Mgr State/Local Gov-East US bkluth@asap.com
Day-to-Day Virginia Account Team
- Jason Jarvis – Eastern States Inside Account Manager jjarvis@asap.com
- Jennifer Warren – Inside Acct Mgr, VA
Tel: (866) 465-2458
Tel: (847) 465-3700 ext. 5699
Fax: (847) 465-3277
Email: jwarren@asap.com

**EXHIBIT C
TO
CONTRACT VA-051025-ASAP**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:

Randall A. Lee

Printed Name:

RANDALL A. LEE VP GOVT

Organization:

ASAP Software

Date:

02.NOV.05



End User License Agreement

NOTICE TO ALL USERS: PLEASE READ THIS CONTRACT CAREFULLY. BY CLICKING THE ACCEPT BUTTON OR INSTALLING THE SOFTWARE, YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN CONTRACT SIGNED BY YOU. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, CLICK ON THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS OF THIS CONTRACT AND DO NOT INSTALL THE SOFTWARE.

1. Definitions.

- a. "Software" means (a) all of the contents of the files, disk(s), CD-ROM(s) or other media (including electronic media) with which this Agreement is provided or such contents as are hosted by McAfee or its distributors, resellers, OEM/MSP partners, or other business partners (collectively "Authorized Partner(s)"), including but not limited to (i) McAfee or third party computer information or software; (ii) related explanatory materials in printed, electronic, or online form ("Documentation"); and (b) upgrades, modified or subsequent versions and updates (including DAT file (virus signature) updates (collectively "Updates"), and Software, if any, licensed to you by McAfee or an Authorized Partner as part of a maintenance contract or service subscription.
- b. "Use" or "Using" means to access, install, download, copy or otherwise benefit from using the Software.
- c. "Permitted Number" means one (1) unless otherwise indicated under a valid license (e.g., volume license) granted by McAfee.
- d. "Computer" means a device that accepts information in digital or similar form and manipulates it for a specific result based upon a sequence of instructions.
- e. "McAfee" means (a) McAfee, Inc., a Delaware corporation, with offices located at 3965 Freedom Circle, Santa Clara, California 95054 if the Software is purchased in the United States, Mexico, Central America, South America, or the Caribbean; (b) McAfee Ireland Limited, with offices located at 11 Eastgate Business Park, Little Island, Cork, Ireland if the Software is purchased in Canada, Europe, the Middle East, Africa, Asia, or the Pacific Rim; (c) McAfee do Brasil Comércio de Software Ltda., with offices located at Rua General Flausino Gomes 78, conj. 51, Sao Paulo, SP, Brazil if the Software is purchased in Brazil; (d) McAfee Co., Ltd. with offices located at Shibuya Mark City West Building 12-1, Dogenzaka 1-Chrome, Shibuya-ku, Tokyo 150-0043, Japan if the Software is purchased in Japan; and (e) McAfee (Shanghai) Software Co. Ltd., with offices located at Room 601 AE-13, Bldg. 2, No. 351, Goushoujing Toad, Zhangliang High-tech Park, Pudong, Shanghai China if the Software is purchased in China.

2. License Grant. Subject to the payment of the applicable license fees, and subject to the terms and conditions of this Agreement, McAfee hereby grants to you a non-exclusive, non-transferable license to Use the Software subject to any restrictions or usage terms specified on the applicable price list or product packaging included as part of the Documentation. Some third party materials included in the Software may be subject to other terms and conditions, which are typically found in a "Read Me" file or "About" file in the Software.

3. Term. This Agreement is effective for the Term set forth in the purchase order issued by you and which is accepted by McAfee or, alternatively, as set forth in the product order form issued by McAfee. If you issue a purchase order to an Authorized Partner and the terms and conditions as set forth in the license grant letter issued by McAfee or included in the Documentation conflicts with the terms and conditions included in the purchase order, then the terms and conditions specified in the grant letter or Documentation shall control. If no Term is included in the above described materials, then the Term shall be for two (2) years from the date of purchase, unless earlier terminated as set forth herein. This Agreement will terminate automatically if you fail to comply with any of the limitations or other requirements described herein. Upon any termination or expiration of this Agreement, you must cease use of the Software and destroy all copies of the Software and the Documentation.

4. Updates. This license is limited to the version of the Software delivered by McAfee and does not include Updates, unless a separate maintenance contract is purchased or, alternatively, you have purchased a service subscription that entitles you to Updates as described in the Documentation. After the specified maintenance period



or service subscription period has expired, you have no further rights to receive any Updates without purchase of a new license to the Software.

5. Ownership Rights. The Software is protected by United States' and other copyright laws, international treaty provisions and other applicable laws in the country in which it is being used. McAfee and its suppliers own and retain all right, title and interest in and to the Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. Your possession, installation, or use of the Software does not transfer to you any title to the intellectual property in the Software, and you will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

6. Multiple Environment Software/Multiple Language Software/Dual Media Software/Multiple Copies/Bundles/Updates If the Software supports multiple platforms or languages, if you receive the Software on multiple media, if you otherwise receive multiple copies of the Software, or if you receive the Software bundled with other software, the total number of your Computers on which all versions of the Software are installed may not exceed the Permitted Number. If the Software is an Update to a previous version of the Software, you must possess a valid license to such previous version in order to Use the Update. You may continue to Use the previous version of the Software on your Computer after you receive the Update to assist you in the transition to the Update, provided that the Update and the previous version are installed on the same Computer, the previous version or copies thereof are not transferred to another Computer unless all copies of the Update are also transferred to such Computer, and you acknowledge that any obligation McAfee may have to support the previous version of the Software ends upon availability of the Update.

7. Evaluation Product Additional Terms. If the product you have received with this license has been identified as "Evaluation" Software or "Beta" Software, then the provisions of this section apply. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supercede such other term(s) and condition(s) with respect to the Evaluation or Beta Software, but only to the extent necessary to resolve the conflict. You acknowledge that the Evaluation or Beta Software may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Evaluation or Beta Software is provided to you "AS-IS", and McAfee disclaims any warranty or liability obligations to you of any kind. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY DOLLARS (U.S. \$50) IN TOTAL. You acknowledge that McAfee has not promised or guaranteed to you that Beta Software will be announced or made available to anyone in the future, that McAfee has no express or implied obligation to you to announce or introduce the Beta Software and that McAfee may not introduce a product similar to or compatible with the Beta Software. Accordingly, you acknowledge that any research or development that you perform regarding the Beta Software or any product associated with the Beta Software is done entirely at your own risk. During the term of this Agreement, if requested by McAfee, you will provide feedback to McAfee regarding testing and use of the Beta Software, including error or bug reports. If you have been provided the Beta Software pursuant to a separate written agreement, your use of the Beta Software is also governed by such agreement. Upon receipt of a later unreleased version of the Beta Software or release by McAfee of a publicly released commercial version of the Beta Software, whether as a stand-alone product or as part of a larger product, you agree to return or destroy all earlier Beta Software received from McAfee and to abide by the terms of the End User License Agreement for any such later versions of the Beta Software. Your Use of the Evaluation or Beta Software is limited to 30 days unless otherwise agreed to in writing by McAfee.

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a. **Limited Warranty.** McAfee warrants that for sixty (60) days from the date of original purchase the media (e.g., CD ROM), if any, on which the Software is contained and provided to you will be free from defects in materials and workmanship.

b. **Customer Remedies.** McAfee's and its suppliers' entire liability and your exclusive remedy for any breach of the foregoing warranty shall be, at McAfee's option, either (i) return of the purchase price paid for the license, if any, or (ii) replacement of the defective media in which the Software is contained. You must return the defective media to McAfee at your expense with a copy of your receipt. This limited warranty is void if the defect has resulted from accident, abuse, or misapplication. Any replacement media will be warranted for the remainder of the original warranty period. Outside the United States, this remedy is not available to the extent McAfee is subject to restrictions under United States export control laws and regulations.

c. **Warranty Disclaimer.** Except for the limited warranty set forth herein, THE SOFTWARE IS PROVIDED "AS IS" AND MCAFEE MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW. MCAFEE, ITS SUPPLIERS AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE. WITHOUT LIMITING THE FOREGOING PROVISIONS, MCAFEE MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS.

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11. Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release,



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13. High Risk Activities. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). McAfee expressly disclaims any express or implied warranty of fitness for High Risk Activities.

14. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of California, if you purchased the Software in the United States, Mexico, Central America, South America, or the Caribbean; (b) in Republic of Ireland, if you purchased the Software in Canada, Europe, Middle East, Africa, Asia, or in countries commonly referred to as part of the Pacific Rim; (c) in Brazil if you purchased the Software in Brazil, (d) in Japan if you purchased the Software in Japan and (e) in China if you purchased the Software in China. If you purchased the Software in any other country, then the substantive laws of the Republic of Ireland shall apply, unless another local law is required to be applied. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The United States District Court for the Northern District of California, and the Superior Court of Santa Clara County, California, when California law applies, the courts of the Republic of Ireland, when the law of Ireland applies, the courts of Brazil when Brazilian law applies, the courts of Japan when Japanese law applies, and the courts of China when Chinese law applies, shall each have non-exclusive jurisdiction over all disputes relating to this Agreement.

15. Free Software. This product includes or may include some software programs that are licensed (or sublicensed) to the user under the GNU General Public License (GPL) or other similar Free Software licenses which, among other rights, permit the user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code. The GPL requires that for any software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any such software covered under the GPL, the source code is made available on this CD. If any Free Software licenses require that McAfee provide rights to use, copy or modify a software program that are broader than the rights granted in this agreement, then such rights shall take precedence over the rights and restrictions herein.

16. Privacy. By entering into this Agreement, you agree that McAfee may collect, retain and use your personal information, including your name, address, e-mail address, and payment details. Your personal information will be used primarily to provide services and product functionality to you. McAfee may also use your personal information for additional communication with you, subject to your decision not to accept such communications from McAfee and subject to applicable laws. McAfee engages other companies and individuals ("subcontractors") to perform functions on its behalf, such as payment processing, order fulfillment, marketing programs and customer service. McAfee may share your information with such subcontractors in order to perform these and other functions, but such subcontractors may not use your personal information for other purposes, unless you agree. By



entering into this Agreement, you agree to the transfer of your personal information to the United States, for the purposes stated above. For more detailed information on the collection, use and transfer of your personal information, and for information on how to opt out of or unsubscribe from the communications described above, please read the McAfee privacy policy on the McAfee web site (www.McAfee.com).

17. Audit for Volume Licenses. McAfee reserves the right to periodically audit you to ensure that you are not using any Software in violation of this Agreement. During standard business hours and upon prior written notice, McAfee may visit you and you will make available to McAfee or its representatives any records pertaining to the Software. The cost of any requested audit will be solely borne by McAfee, unless such audit discloses an underpayment or amount due to McAfee in excess of five percent (5%) of the initial license fee for the Software or you are using the Software in an unauthorized manner, in which case you shall pay the cost of the audit.

18. Miscellaneous. This Agreement sets forth all rights for the user of the Software and is the entire Agreement between the parties. This Agreement supersedes any other communications, representations or advertising relating to the Software and Documentation. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by McAfee. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

19. McAfee Customer Contact. If you have any questions concerning these terms and conditions, or if you would like to contact McAfee for any other reason, please call (408) 988-3832, fax (408) 970-9727, or write: McAfee, Inc., 3965 Freedom Circle, Santa Clara, California 95054. Alternatively, you may contact any other local McAfee entity that is listed at <http://www.McAfee.com>